IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 16 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHBHAI SHANKARBHAI MADRASHI
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 16 of 1999
MS RV ACHARYA for the Appellant
MR. I.M. PANDYA, APP for the Respondent

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 04/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.M.MEHTA)

Rameshbhai Shankarbhai Madrasi, appellant, original accused, has filed this appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") is directed against judgement and order dated 30.11.1998 passed by the learned Additional Sessions Judge, Ahmedabad, in Sessions Case No. 103 of 1998. The learned Trial Judge by his impugned judgement and order was pleased to hold that Shri Rameshbhai Shankarbhai Madrasi, accused is convicted under 21 of Narcotic and Psychotropic Substances Act, 1985 (hereinafter referred to as "the Act") and under Section 235(2) of the Code and convicted for offence under Section 8(c) of the Act. The learned Trial Judge further ordered that the accused is sentenced to undergo ten years rigorous imprisonment with fine of Rs. 1,00,000/and in default of payment of fine, the accused shall further undergo one year rigorous imprisonment. The learned Trial Judge has further held that muddamal of Rs. 80/- stands confiscated with the State and Muddamal Brown Sugar shall be sent to Excise Department for disposal as per the rules.

2. The facts giving rise to this appeal are as under:

2.1 It is the case of the prosecution that on 3.1.1998 at about 3.30 p.m. the accused was likely to travel from Khokhra to old slum Quarters, near Jolly Apartment and is likely to carry in possession of 30.700 grams of brown sugar, morphine, codeine, acetyl codeine, thebaine and other narcotic substances (manufactured drugs). The charge against the accused is that he was found with the said substance at about 3.30 p.m. to 6.00 p.m. and therefore he was charged under Section 21 of the NDPS Act.

2.2 It is the case of the prosecution that Vijaysinh Laxmansinh Chauhan, Police Inspector along with Mr. Puvar, Police Inspector, Narcotic Cell, Ahmedabad, received an information on 3.1.1998 at about 2 O'clock that one person is likely to visit Khokhra and travel to old Slum Quarters, near Jolly Apartment and is aged about 30 years and he is selling brown sugar daily and he is also selling there today and therefore a raid is to be carried out. He has reduced the information to writing which is at Exh. 17 of the record.

2.3 It is the case of the prosecution that the Superior Officer was informed and thereafter two panchas

namely, Kamlesh Yadav and Ramesh Ambalal, PW 1, Exh. 11 were called and they were made to understand about the information and raid. Preliminary panchnama was prepared around 3 O'clock. The raiding party including the panch witnesses had proceeded towards the spot and as per the information they found one person dealng in brown sugar. The raiding party carried out search on the person and the raiding party found that the said person was in possession of 30.700 grams of powder of brown sugar in the pocket of the pand which he had put on. Shri Vijaysinh Laxmansinh Chauhan, complainant, had seized the said muddamal immediately and had sealed, signed and labelled on the said muddamal and had kept it with him and thereafter handed over to the Police Station Officer. As soon as the accused was caught hold of, he was informed that they desire to carry out search on him and he has the right to call a Gazetted Officer or Magistrate before the said search is carried out. The accused has stated that he does not want to call any Gazetted Officer or Magistrate. The accused stated that the raiding party can carry out the search.

2.4 Thereafter, panchnama was prepared at Exh. 12 on the spot for the proceedings which had taken place at the spot and the prelilinary and final panchnama was prepared at 3.30 to 3.45 p.m. and ultimately complaint was lodged and offence was registered and the Police Sub-Inspector Jhala had investigated into the matter and charge-sheet was placed for the offence under Section 8 read with Section 21 of the N.D.P.S. Act.

2.5 For proving the case of the prosecution, the prosecution has examined Shri Ramesh Ambalal, PW-1, Exh. 1; Khodaji Ishverbhai, PW 2, Exh. 13, Officer of Amraiwadi Police Station on the Narcotic Cell; Vinodkumar Jaswantlal Dantani, PW 3, Exh. 16 who is also Officer of the Narcotic Cell on the said date; Vijaysinh Laxmansinh Chauhan, PW 4, Exh. 17, who is also Police Inspector, Narcotic Cell since 1998; Bharatsinh D. Jhala PW 5, who is also Police Inspector of Amraiwadi Police Station.

2.6 Panch witness Ramesh Ambalal has categorically stated that he is working in Anil Starch and going for daily wage. He was called by constable Vinodkumar Jaswantlal Dantani to take as panch for which he has agreed. He had accompanied the Police Officer during raid and he has stated that the Officers have carried out raid on the accused. During raid a packet was found from the accused which contains 30.700 grams powder. The said packet was thereafter separated, converted into three parts, one main packet and other two separate packets of

5 grams each. The said packets were sealed in the presence of panchas and they had also signed on the same. He has also confirmed that panchnama was prepared and for which he has signed on the same.

2.7 Similarly, Khodaji Ishverbhai, Police Inspector, who was also a member of the raiding party was examined at Exh. 13. He has also stated that the offence was registered at serial No. 28 on the same day. He has also brought original station diary and a xerox copy of which has been produced at Exh. 14 and necessary report under Section 157 of the Code of Criminal Procedure is also prepared and necessary letter addressed by the Police Inspector to Police Station Officer, Amraiwadi, which is produced at Exh. 15, which contained that the raid was carried out, offence was registered and muddamal was recovered.

2.8 Vinodkumar Jaswantlal Dantani, PW 3, Exh. 16, was also examined and he has confirmed that the accused was searched. Along with him, one Head Constable Mr. Gosai and Mr. Puvar, Police Inspector and Mr. Chauhan, Police Officer, were there. The accused was searched and he was informed that he can call any Gazetted Officer or Magistrate. He declined the same. In that place the authority carried out search and found 30.700 grams of brown sugar. The same thing was weighed by Mr. Gosai. Out of that, three packets were prepared, one main packet and two sample packets of 5 grams each. The packets were sealed and panchnama was prepared and the same was also signed by the panchas. He has confirmed that he has called the panchas and panchas have come.

2.9 Vijaysinh Laxmansinh Chauhan, Police Inspector, PW 4, Exh. 17, has also stated that letter dated 3.1.1998 was addressed by the Police Inspector to the Police Superintendent in connection with the information regarding the accused. He has also brought the original register by which the advance information was received by the office which is produced at Exh. 19. He has also confirmed the preliminary panchnama prepared at Exh. 12 and the panchas have signed the same in his presence and the Police Inspector Mr. Puvar has also signed. He has also confirmed that the raiding party has asked the accused that he is entitled to call Gazetted Officer or Magistrate for which he declined. The accused was also searched and for that the Police Inspector addressed a letter to the accused regarding the same for calling Gazetted Officer or Magistrate for which the accused has stated that he is not interested in calling any Gazetted Officer or Magistrate, which is produced at Exh. 20.

Seizure memo was prepared at Exh. 21 by which the goods were seized from the accused. Complainant Mr. Chauhan has filed the complaint. He has also stated that the Police Inspector addressed a letter dated 4.1.1998 to the Police Supreintendent in connection with the fact that the accused was found with brown sugar of 30.700 grams and teh same was confirmed by Mr. Puvar and offence is registered against the accused and the accused was arrested at 5.45 p.m. He has also stated the Police Inspector has also informed the brother of the accused about the arrest. The said arrest has been produced at Exh. 25. He has also stated that separate packets were prepared and they were sent to Forensic Science Laboratory by the Police Inspector and necessary authorisation was also made and F.S.L. has confirmed that they have received the same on 5.1.1998.

2.10 Bharatsinh D. Jhala, Police Inspector, PW 5, Exh. 27 has stated that F.S.L. has received the samples on 5.1.1998 which is produced at Exh. 28 and the F.S.L. has given its report which is at Exh. 29 and stated that the substance which has been received by them which was sealed which is in powder form, contained morphine, codeine, acetyl codeine, thebaine and other narcotic substances. Statement of the accused was also recorded under Section 313 of the Criminal Procedure Code where the defence was of total denial.

FINDING OF TRIAL COURT:

3. Thereafter, the matter was heard by the learned Trial Judge. The learned Trial Judge has considered both documentary as well as oral evidence. From the order of the learned Trial Judge it was the case of the accused before the Trial Judge that the panch Ramesh Ambalal is not supporting the case of the prosecution. The learned Trial Judge has considered the arguments. The learned Trial Judge has also considered the oral evidence led by the prosecution as well as the documentary evidence produced by the prosecution. The learned Trial Judge has also held that Vinodbhai and Chauhan have fully supported the case of prosecution and there is no reason to doubt. The learned Trial Judge has also held that the prosecution has complied with the mandatory provision of Section 50 of the NDPS Act which is revealed from the evidence on record. The learned Trial Judge also considered the oral evidence of Vinodkumar Dantani, Exh. 16 and Vijaysinh Laxmansinh Chauhan, Exh. 17 and after examination of the same, held that both the witnesses have supported each other. The accused was made to understand about the information to carry out raid and

option was given to the accused to call Gazetted Officer or Magistrate which the accused denied and search was carried out on the accused and in the search about 30.700 grams of brown sugar was seized from the pocket of the pant put on by the accused. Thereafter, muddamal was seized and ultimately three packets were prepared and the same were sent to F.S.L. and F.S.L. report also confirmed that the muddamal contains brown sugar. The learned Trial Judge has further held that all the witnesses have created confidence to believe them. The documents on the record show that there was full compliance of provisions of Sections 42, 50, and 57 of the ACt.. It may be noted that panch Ramesh Ambalal was serving in Anil Starch who happened to be an independent witness and not police officer. In view of the same, the learned Trial Judge has held that the accused was found to be guilty.

4. We have heard Ms. Acharya, learned counsel for the accused and Mr. Pandya, learned Additional Public Prosecutor. The learned counsel for the appellant-accused has submitted that the panch witness is not corroborating the case of the prosecution and therefore the prosecution has failed to prove the case against the accused. She further submitted that in view of the same NDPS Act being a stringent Act, benefit of doubt may be given to the accused to that extent.

5. On the other hand, learned Additional Public Prosecutor has relied on the documentary as well as oral evidence and stated that the prosecution has fully proved the case beyond reasonable doubt against the accused and there is no infirmity. He further submitted that the panch has also supported the case of the prosecution and other two witnesses Vinodkumar Jaswantlal Dantani and Vijaysinh Laxmansinh Chauhan have also supported the case of the prosecution and therefore this Court may not interfere with the order of conviction passed by the learned Trial Judge.

6. We have considered the case of the prosecution. We have also considered documentary as well as oral evidence led by the parties. On the facts of the case it is very clear that the accused was found in possession of 30.700 grams of brown sugar. He has not been able to state that how he has come into possession of brown sugar. All the mandatory provisions have also been complied with by the authority by asking the accused whether he wants to call Gazetted Officer or Magistrate before conducting search. We have examined the documents produced by the parties. We have also considered the

other documents, panchnama, letters and report of F.S.L. All these facts clearly show that the prosecution has been able to prove the case against the accused that the accused was in possession of 30.700 grams of brown sugar in view of provision of Section 8(c) of the NDPS Act which provides prohibition of certain offence.

7. We have gone through the order of the learned Trial Judge. We are of the view that the learned Trial Judge has given cogent and convincing reasons for convicting the accused. The learned Trial Judge has considered deposition of five witnesses which we have examined and considered. We have also considered various documentary evidence.

8. In view of the same, the appeal is dismissed. The order of conviction passed by the learned Trial Judge dated 30.11.1998 is confirmed.

(D.K. TRIVEDI, J)

(K.M. MEHTA, J)
(pkn)